

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

Mary T.,

Claimant,

and

Inland Regional Center,

Service Agency.

OAH No. 2011030455

**DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on August 2, 2011.

The Inland Regional Center (IRC) was represented by Leigh-Ann Pierce, Consumer Services Coordinator, Fair Hearings and Legal Affairs.

Pam C., represented Mary T., (Mary or claimant) who was present during the hearing.

The matter was submitted on August 2, 2011.

**ISSUE**

Is Mary T., currently 45 years old, eligible for regional center services under the Lanterman Act as a result of a diagnosis of mental retardation?

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On March 1, 2011, Mary filed a Fair Hearing Request appealing IRC's determination that she was ineligible for regional center services under a diagnosis of mental retardation.

2. On August 2, 2011, the record was opened, jurisdictional documents were presented, documentary evidence was received, sworn testimony was given, closing arguments were given, the record was closed, and the matter was submitted.

### *Diagnostic Criteria for Mental Retardation*

3. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM-IV-TR) contains the diagnostic criteria used for mental retardation and learning disorders. The DSM-IV-TR provides, "The essential feature of mental retardation is significantly subaverage intellectual functioning (Criterion A), that is accompanied by significant limitation in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must be before the age of 18 years (Criterion C)." The DSM-IV-TR further notes, "Significantly subaverage intellectual functioning is defined by IQ of about 70 or below . . . ."

The DSM-IV-TR observed that with Learning Disorders "the development in a specific area (e.g. reading, expressive language) is impaired but there is no generalized impairment in intellectual development and adaptive functioning." Additionally, "Learning Disorders are characterized by academic functioning that is substantially below that expected given the person's chronological age, measured intelligence and age-appropriate education. The specific disorders identified as learning Disorders are Reading Disorder, Mathematics Disorder, Disorder of Written Expression, and Learning Disorder Not Otherwise Specified."

### *Evidence Presented At Hearing*

4. On February 9, 2011, Edward Pflaumer, Ph.D., conducted a psychological assessment for IRC. Claimant told Dr. Pflaumer that she grew up in Arkansas and attended special education classes in high school. She reported being "slower" than others and stayed home after graduating, never having a job. Claimant has a 15-year-old daughter who is under the care of child protective services because of allegations of molestation while in the care of claimant's aunt and uncle. Claimant's reading and spelling skills were at a second grade level and her math skills were at a fourth grade level indicating a learning disability. Claimant's cognitive test scores were in the 60s, well below the cut off of 70 required for a diagnosis of mental retardation. However, Dr. Pflaumer concluded that claimant was not mentally retarded because of her high scores on the adaptive functioning tests administered, making her ineligible for regional center services.

5. On October 7, 2010, Robert Suiter, Ph.D., Psy.D., performed a psychological assessment to assess claimant's ability to care for her daughter. Claimant advised him that she graduated from high school but was always in special education classes. She has never been employed and has always received SSI benefits. Dr. Suiter's report contained his detailed clinical interview with claimant. Some of the tests Dr. Suiter administered indicated a heightened attempt by claimant to present herself favorably, casting doubt on their reliability. Claimant's cognitive test scores were all in the 60s, again well below the 70 cut

off. Dr. Suiter concluded that the scores placed claimant in the mildly mentally retarded range. Dr. Suiter opined that her lowered intellectual functioning coupled with the lack of any type of vocational training throughout her life would make it difficult for her to gain employment, make it extremely difficult for her to adequately care for her daughter and that she would have great difficulty managing any type of emergency situation. Claimant had a very limited understanding of how to manage a wide range of situations and Dr. Suiter opined that claimant's condition was "a chronic condition which would not improve or resolve." Dr. Suiter opined that claimant did not have any significant or severe personality traits or characteristics.

6. IRC's January 27, 2011, social assessment noted that in December 2010 claimant was placed at Windsor House when her mother and sister moved without telling her, leaving her alone at the house without resources. Adult Protective Services became involved and placed claimant at Windsor House. Claimant's daughter was placed in foster care in 2009 or 2010 after being sexually abused by a relative staying in the house.

7. IRC's February 8, 2011, medical evaluation contained an impression of history of learning disorder, probable mental retardation and mild scoliosis.

8. A transcript from claimant's high school in Arkansas indicated that she was in special education classes from seventh grade through twelfth grade.

9. On June 23, 2011, Sara Hibbs, Psy.D., IRC staff psychologist, administered the Vineland Adaptive Behavior test, the results of which suggested that claimant exhibits adaptive skills in the low range with moderate deficits.

10. Dr. Hibbs testified that unlike Dr. Pflaumer, Dr. Suiter did not administer any adaptive measures to substantiate his mild mental retardation diagnosis. Dr. Hibbs also testified that there were no documents establishing that claimant had a developmental disability before age 18, which the Lanterman Act requires. Although claimant was in special education classes, no evidence regarding the disability under which she received those services was provided.

11. Pam C. has known claimant since 2010 when she began caring for claimant's daughter in foster care. Pam has had extensive contact with claimant and numerous opportunities to observe her. She provided detailed, credible, testimony describing claimant's severe adaptive deficits and cognitive difficulties.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

*Statutory Authority*

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

“The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.”

4. Welfare and Institutions Code section 4512, subdivision (a) defines “developmental disability” as follows:

“‘Developmental disability’ means a disability which originates before an individual attains age 18, continues, or can be expected to continue indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.”

5. California Code of Regulations, title 17, section 54000 provides:

“(a) ‘Developmental Disability’ means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.”

6. California Code of Regulations, title 17, section 54001 provides:

“(a) ‘Substantial disability’ means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.”

### *Appellate Authority*

7. The purpose of the Lanterman Act is to provide a “pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life.” (Welfare and Institutions Code section 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

8. The Lanterman Act enumerates legal rights of persons with developmental disabilities. A network of 21 regional centers is responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. Designed on a service coordination model, the purpose of the regional centers is to “assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.” The Department of Developmental Services allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports. (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 682-683.)

### *Evaluation*

9. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. The burden to establish eligibility rests with claimant. The evidence introduced in this hearing demonstrated that Mary has mental retardation. Claimant’s IQ scores clearly established that she received scores in the mild mental retardation range. Dr. Suiter diagnosed her with mild mental retardation and although he did not per se perform an adaptive functioning test, his report demonstrated that he did talk to claimant at length about her adaptive functioning, making his opinions reliable. A preponderance of the evidence established that claimant has significant adaptive deficits despite her test scores. While strengths were reported, the

records introduced, Pam C.'s credible testimony, and the observations of Mary at this hearing, established that significant deficits existed. Moreover, a second grade reading level and a fourth grade math level are far below what would be expected of a 45 year old individual.

A preponderance of the evidence also established that claimant had this condition prior to age 18. While documents are helpful, nothing requires a claimant to submit written evidence to support her position; credible testimony can be sufficient. Here, claimant consistently described her lifelong deficits to several evaluators, and those statements, as well as the transcript provided, established that claimant's condition began prior to age 18. IRC offered no persuasive evidence to refute claimant's assertion that her condition began before age 18.

### ORDER

Claimant Mary T.'s appeal from the Inland Regional Center's determination that she is not eligible for regional center services and supports under a diagnosis of mental retardation is granted. Claimant is eligible for regional center services and supports under the Lanterman Developmental Disabilities Services Act with a diagnosis of mental retardation.

DATED: August 10, 2011

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MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings

### NOTICE

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.**